

E-FILED on 6/19/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RAMBUS INC.,

Plaintiff,

v.

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR
MANUFACTURING AMERICA INC.,

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., SAMSUNG SEMICONDUCTOR, INC.,
SAMSUNG AUSTIN SEMICONDUCTOR,
L.P.,

NANYA TECHNOLOGY CORPORATION,
NANYA TECHNOLOGY CORPORATION
U.S.A.,

Defendants.

No. C-05-00334 RMW

ORDER DENYING RAMBUS'S MOTION TO
DISMISS NANYA'S FOURTH
COUNTERCLAIM

[Re Docket No. 149]

Plaintiff Rambus Inc. ("Rambus") moves to dismiss "Counterclaim 4" in the Answer, Affirmative Defenses, and Counterclaims ("Ans.") filed by defendants Nanya Technology Corporation and Nanya Technology Corporation U.S.A. (collectively "Nanya"). Rambus argues that Counterclaim 4, which alleges violation of Cal. Bus. & Prof. Code section 17200, is time-barred.

1 Nanya opposes the motion. The court has read the moving and opposing papers and considered the
2 arguments of counsel. For the reasons set forth below, the court DENIES Rambus's motion to
3 dismiss.

4 In its counterclaims, Nanya alleges improper conduct on Rambus's part with respect to patent
5 claims and patent enforcement. In the 1990's, Rambus joined the Joint Electronic Devices
6 Engineering Council ("JEDEC"), a non-profit standard-setting organization for, *inter alia*, the
7 DRAM chip industry. Ans. ¶¶ 191.10, 191.14. According to Nanya, Rambus participated in JEDEC
8 with the goal of acquiring information about the developing standards for SDRAM. *Id.* ¶ 191.25.
9 Rambus used this information to plan a "patent 'ambush'" whereby it would have the power to
10 exclude competitors from implementing the pending JEDEC SDRAM standard and subsequent
11 improvements. *Id.* ¶¶ 191.26-191.27, 191.31. Without disclosing its amendment activity to JEDEC
12 members, Rambus amended its patent applications to cover the JEDEC standard. *Id.* ¶¶ 191.31,
13 205.3. Nanya alleges that Rambus then deliberately chose not to assert its claimed patent rights until
14 Nanya and other industry participants had significantly invested in products compatible with the
15 JEDEC standard. *Id.* ¶¶ 191.64, 205.4. Therefore, Nanya asserts, Rambus acquired the market
16 power, or a dangerous probability of obtaining market power, over the market for DRAM memory.
17 *Id.* ¶ 192.

18 In alleging a continuing antitrust violation, "an overt act by the defendant is required to
19 restart the statute of limitations." *Pace Indus. v. Three Phoenix Co.*, 813 F.2d 234, 237 (9th Cir.
20 1987). An overt act has two elements: "1) [i]t must be a new and independent act that is not merely
21 a reaffirmation of a previous act; and 2) it must inflict new and accumulating injury on the plaintiff."
22 *Id.* at 238. If an initial act or decision occurs outside the limitations period, "separate violations . . .
23 not controlled by the previous act or decision" restart the statute of limitations, but mere continuing
24 injury does not. *Id.*

25 Here, Nanya argues that attempts to extract royalties based Rambus's patents-in-suit, which
26 were issued between January 30, 2001 and October 19, 2004, constitute overt acts within the statute
27 of limitations. Rambus's antitrust efforts are alleged to include the amendment of patents to cover
28 the JEDEC standard and its foreseeable extensions and improvements, including the SDRAM


1 interfaces currently in use, and attempts to extract royalties from Nanya and other industry
 2 participants. *See* FAA §§ 199.26-27, 214.3-4. Because the statute of limitations is measured from
 3 the last occurrence of an overt act in furtherance of the alleged antitrust scheme underlying its
 4 section 17200 claim, Nanya argues that these allegations place its section 17200 claim within the
 5 statute of limitations. The court agrees. The asserted amendment of and attempts to license the
 6 patents-in-suit in furtherance of the alleged antitrust scheme (which is alleged to stem from, *inter*
 7 *alia*, the conduct at JEDEC and attempts to amend patents to cover JEDEC-compliant products), if
 8 accepted as true, brings the alleged course of conduct in violation of section 17200 within the four
 9 year statute of limitations. *See Hennegan v. Pacifico Creative Serv., Inc.*, 787 F.2d 1299, 1300-02
 10 (9th Cir. 1986) (holding that affirmative acts inflicting new injury restarted the statute of limitations,
 11 even when taken pursuant to an agreement made prior to the limitations period); *Suh v. Yang*, 987 F.
 12 Supp. 783, 795-96 (N.D. Cal. 1997).

13 Rambus argues that no dates are specified as to the allegations regarding prosecution of
 14 patents. However, the lack of dates does not render Nanya's pleadings deficient. Where, as here, the
 15 allegations involve a continuous course of wrongful conduct in violation of section 17200, fact-
 16 specific pleading is not required. *See Quelimane Co. v. Stewart Title Guar. Co.*, 19 Cal. 4th 26,
 17 46-47 (1998) (rejecting the requirement that a plaintiff make "specific factual allegations in addition
 18 to pleading the elements of the alleged unlawful act"); *People v. Superior Court (Jayhill Corp.)*, 9
 19 Cal. 3d 283, 287-88 (1973) (holding that specific pleadings of time and place were unnecessary
 20 where plaintiffs alleged a scheme to mislead customers and that such details were properly the
 21 subject of discovery). It is sufficient that Nanya's pleadings indicate that the patents-in-suit, issued
 22 within the limitations period, are part of the alleged wrongful course of conduct.

23 III. ORDER

24 For the foregoing reasons, the court DENIES Rambus's motion to dismiss.

25
 26 DATED: 6/18/07

27 
 28 RONALD M. WHYTE
 United States District Judge

1 Notice of this document has been electronically sent to:

2 **Counsel for Plaintiff:**

3 Jeannine Y. Sano	sanoj@howrey.com
Brian K. Erickson	berickson@dbllp.com
4 Burton Alexander Gross, Esq	Burton.Gross@mto.com
Carolyn Hoecker Luedtke	carolyn.luedtke@mto.com
5 Craig N. Tolliver	ctolliver@mckoolsmith.com
David C. Vondle	dvondle@akingump.com
6 Gregory P. Stone	gregory.stone@mto.com
Peter A. Detre	detrepa@mto.com
7 Pierre J. Hubert	phubert@mckoolsmith.com
Steven McCall Perry	steven.perry@mto.com

9 **Counsel for Defendants:**

10 Jason Sheffield Angell	jangell@orrick.com
Theodore G. Brown, III	tgbrown@townsend.com
11 Vickie L. Feeman	vfeeman@orrick.com
Daniel J. Furniss	djfurniss@townsend.com
12 David J. Healey	david.healey@weil.com
Jordan Trent Jones	jtjones@townsend.com
13 Ana Elena Kadala	anita.kadala@weil.com
Patrick Lynch	plynch@omm.com
14 Kenneth L. Nissly	kennissly@thelenreid.com
Kenneth R. O'Rourke	korourke@omm.com
15 Matthew D. Powers	matthew.powers@weil.com
Edward R. Reines	Edward.Reines@weil.com
16 Mark Shean	mshean@orrick.com
Kaiwen Tseng	ktseng@orrick.com
17 Geoffrey H. Yost	gyost@thelenreid.com
Susan Gregory van Keulen	svankeulen@thelenreid.com

21 Counsel are responsible for distributing copies of this document to co-counsel that have not
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24 **Dated:** 6/19/07

SPT
Chambers of Judge Whyte